U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

PUBLIC COPY

FILE: [redacted] Office: Miami Date: FEB 7 2001

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(6)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(D). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a) of the Act states, in part, that aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

> (6) Illegal entrants and immigration violators --
>
> (D) Stowaways. Any alien who is a stowaway is inadmissible.

Section 101(a) of the Act, 8 U.S.C. 1101(a), defines the term "stowaway:"

> (49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

The record reflects that the applicant arrived at Port Everglades, Florida, on board the vessel M/V SATEKRA on June 3, 1994. He and two other Cubans were presented to the Service as stowaways on

board the vessel. In his application for asylum (Form I-589) signed by the applicant on August 2, 1994, the applicant states:

> After we left Cuba on a raft on [redacted] we were on the sea for six days when we were rescued by a vessel that took us to Venezuela. We arrived there on [redacted] We were ignored by the Venezuelan authorities after they confirmed we were Cuban rafters on our way to the U.S.A. when we were picked up by the vessel that took us to La Guaira, Venezuela.
>
> We remained at La Guaira until [redacted] (74 days) aboard the vessel. Out of desperation three of us boarded another vessel that we discovered was going to make a trip to Florida, U.S.A. We hid until the vessel was in international waters. We explained our situation to the crew.
>
> We arrived at Port Everglades where we were officially classified as "stowaways." We consider ourselves to be "rafters." We had no intention nor planned to go to Venezuela.

Matter of M/V "South African Victory", 12 I&N Dec. 253 (BIA 1967), held that an intent to conceal one's self aboard a United States bound vessel for the purpose of obtaining passage thereon is an element essential to constituting an alien as a stowaway within the meaning of section 273(d) of the Act, 8 U.S.C. 1323. The Board stated that it has been judicially held that a stowaway is one who conceals himself aboard an out going vessel for the purpose of obtaining free passage. The courts have also ruled it is quite clear that the word "stowaway" is used to indicate one who steals his passage. Likewise, it has been judicially stated that to justify the conviction of a person for stowing away on a vessel it is necessary to establish intent to go and remain on board without paying for a ticket and that accidental remaining on board does not suffice.

An alien is classified as a stowaway in the event that neither the arriving alien, nor the carrier, can produce any documentary evidence that the alien boarded the aircraft or vessel with the consent of the carrier. A copy of the M/V SATEKRA crew list, contained in the record of proceeding, lists the applicant and two others as "3 Cuban stowaways."

Accordingly, the applicant was correctly classified as a stowaway. He is, therefore, inadmissible to the United States pursuant to

section 212(a)(6)(D) of the Act. There is no waiver available to an alien found inadmissible under this section.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966 based on his inadmissibility to the United States pursuant to section 212(a)(6)(D) of the Act. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.